
United States 8
Circuit Court of Appeals

For the Ninth Circuit.

OLIVE LEMM, Individually, and as Administra-
trix of the Estate of CHARLES LEMM, De-
ceased,

Appellant,

vs.

NORTHERN CALIFORNIA NATIONAL BANK,
THE REDDING SAVINGS BANK and
CARR and ~~GREGORY~~, a Co-partnership,
Kennedy Appellees.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Northern District of California,
Northern Division.

FILED
APR - 1 1937

PAUL P. O'BRIEN,
CLERK

United States
Circuit Court of Appeals

For the Ninth Circuit.

OLIVE LEMM, Individually, and as Administra-
trix of the Estate of CHARLES LEMM, De-
ceased,

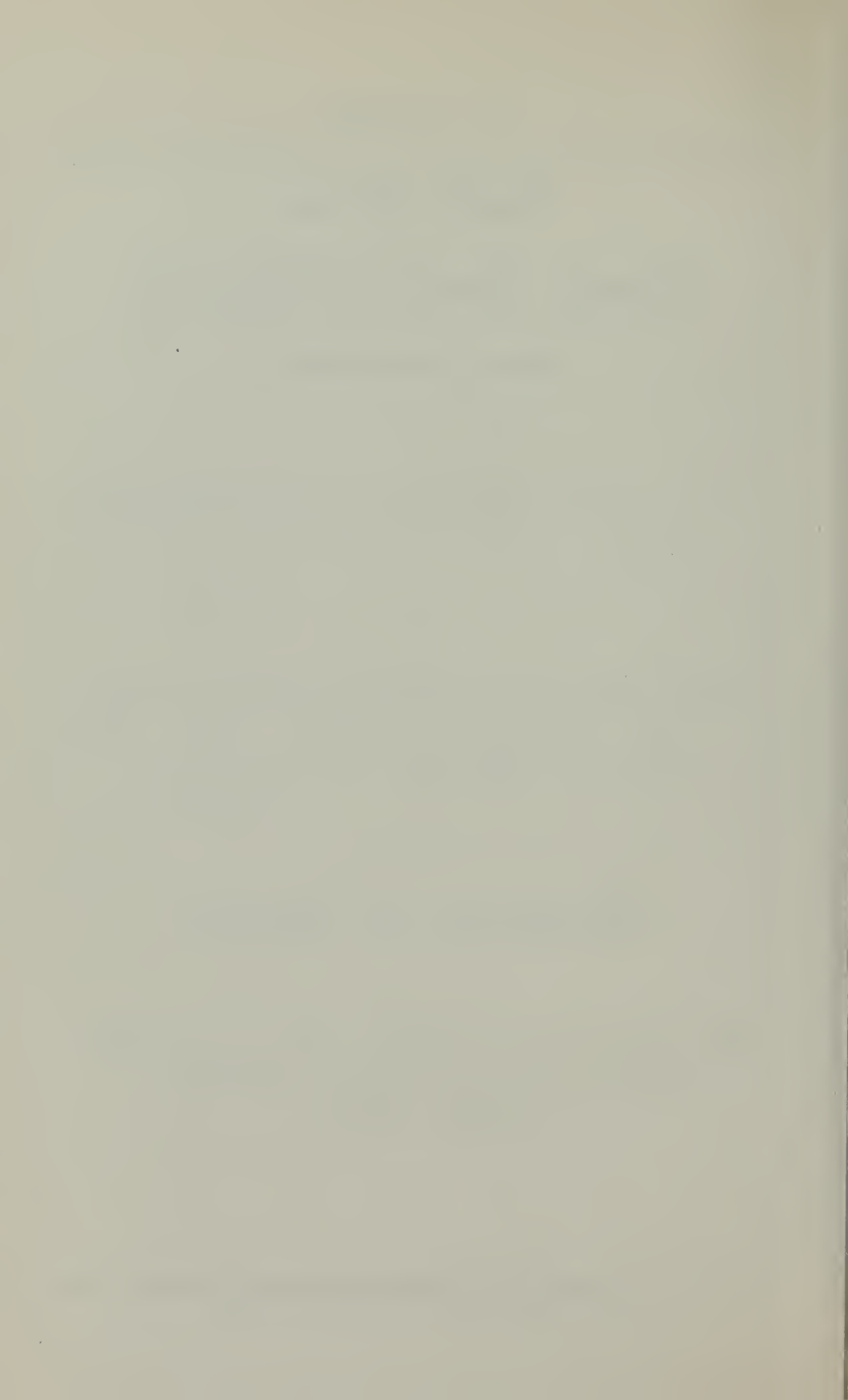
Appellant,

vs.

NORTHERN CALIFORNIA NATIONAL BANK,
THE REDDING SAVINGS BANK and
CARR and GREGORY, a Co-partnership,
Appellees.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Northern District of California,
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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Assignment of Error.....	34
Certificate of Clerk U. S. District Court to Transcript on Appeal	35
Citation on Appeal.....	38
Creditor's Motion for Dismissal of proceed- ings (#6935).....	9
Debtor's Petition under Sec. 75 (#6575).....	17
Debtor's Petition under Sec. 75 (#6935).....	1
Minutes of Court—9022036—Dismissing pro- ceedings (#6935).....	17
Order Allowing Appeal.....	37
Order approving Debtor's petition under Sec. 75 (#6575)	24
Order approving Debtor's petition under Sec. 75 (#6935)	9
Petition for Allowance of Appeal.....	31
Petitioner's proposal of compromise (#6575)...	26
Praecipe for Transcript on Appeal.....	25

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San Francisco, California.

GLENN D. NEWTON, Esq.,

Redding, Calif.

Attorneys for Appellees:

CARR & KENNEDY, Esqs.,

Redding, Calif.

In the District Court of the United States
for the Northern District of California.

No. 6935

In the Matter of OLIVE LEMM, individually and
OLIVE LEMM, as Administratrix of the Estate
of Charles L. Lemm, sometimes known as Chas.
L. Lemm, deceased, Debtor.

DEBTOR'S PETITION IN PROCEEDINGS
UNDER SECTION 75, AS AMENDED, OF
THE BANKRUPTCY ACT.

The petition of Olive Lemm, individually, and
Olive Lemm, as Administratrix of the Estate of
Charles L. Lemm, sometimes known as Chas. L.
Lemm, Deceased, of Bella Vista, in the County of
Shasta, and district and state of California, respect-
fully represents:

That your petitioner is the duly appointed, qualified and acting Administratrix of the Estate of Charles L. Lemm, sometimes known as Chas. L. Lemm, Deceased, and that she is the widow of said deceased. That all the property hereinafter described and set forth was and is the property of your petitioner and said deceased.

That she is personally bona fide, engaged primarily in farming operations as follows: Raising and selling of livestock and general farming; that such farming operations occur in the County of Shasta within said judicial district; that she is insolvent or unable to meet her debts as they mature; and that she desires to effect a composition or extension of time to pay her debts under section 75, as amended, of the Bankruptcy Act.

That the schedule hereto annexed, marked "A", and verified by your petitioner's oath, contains a full and true statement of all her debts, and (so far as possible to ascertain) the names and places of residence of her creditors, and such further statements concerning said debts as are required by the provisions of said Act.

That the schedule hereto annexed, marked "B", and verified by your petitioner's oath, contains an accurate inventory [1*] of all her property, both real and personal, and such further statements concerning said property as are required by the provisions of said act.

*Page numbering appearing at the foot of page of original certified Transcript of Record.

Wherefore, your petitioner prays that her petition may be approved by the Court and proceedings had in accordance with the provisions of said section.

OLIVE LEMM

Petitioner.

GLENN D. NEWTON

Attorney for Petitioner. [2]

United States of America,
District of Northern California—ss.

I, Olive Lemm, individually, and Olive Lemm, as Administratrix of the Estate of Charles L. Lemm, sometimes known as Chas. L. Lemm, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

OLIVE LEMM

Subscribed and sworn to before me this 12th day of June, 1936.

[Seal]

GLENN D. NEWTON

Notary Public in and for the County of Shasta,
State of California.

My commission expires December 15th, 1937. [3]

Schedule A.

LIABILITIES

1. Promissory note made, executed and delivered by petitioner and said Chas. L. Lemm, deceased, as husband and wife, on July 13th, 1939, to Redding Savings Bank, secured by Deed of Trust of even date. Amount due on principal of said note \$11,500.00
 Accrued interest on said note to Feb. 1, 1936, estimated in the sum of 3,119.88
2. Promissory note made, executed and delivered by petitioner and said Chas. L. Lemm, Deceased, as husband and wife, on February 10th, 1931, to Redding Savings Bank, a banking corporation, Redding, California, secured by Deed of Trust of even date. Amount due on principal of said note 3,500.00
 Accrued interest on said note to Feb. 1st, 1936, estimated in the sum of 1,041.09
3. Claims filed against Estate of said Charles L. Lemm, Deceased, as follows:
 Promissory note made, executed and delivered by petitioner and said deceased, as husband and wife, to the Northern California National Bank, Redding, California, dated September 26th, 1932, in the sum of One Thousand Dollars.

Amount due on principal, together with interest accrued thereon	1,231.34
Open Book Account with Pernau-Walsh Printing Company, San Francisco, Calif. for printing brief in the sum of	100.00
Open Book Account with Carr & Kennedy, Attorneys [4] at Law, Redding, California, for services in Cow Creek Water case and litigation with Stillwater Land and Cattle Company, in the sum of	760.37
Open Book Account with the Union Oil Company of California, Redding, California, for gasoline, etc. in the sum of	24.30
Costs and expenses of administration in the Estate of Charles L. Lemm, Deceased, in the sum of	1,485.25
(Notify Jesse W. Carter, Attorney at Law, Redding, California, attorney for said petitioner, as Administratrix of said estate for particular items of said statement)	
Attorney's fee of Jesse W. Carter, Attorney at Law, Redding, California, as attorney for said Estate, estimated in the sum of	1,200.00
<hr/>	
Total Liabilities	\$23,962.23

Schedule B
ASSETS
REAL PROPERTY

Cow Creek Ranch:

The SE $\frac{1}{4}$ and S $\frac{1}{2}$ of SW $\frac{1}{4}$ of Section 33, Township 33, North, Range 3 West consisting of 240 acres; SW $\frac{1}{4}$ of Section 36, Township 33 North, Range 3 West consisting of 160 acres; Township 32 North, Range 3 West, M.D.M. Frac. N $\frac{1}{2}$ of NW $\frac{1}{4}$ of Section 2, save and except that certain portion thereof conveyed by Henry N. Wilkinson in his *lift* time to William Redeker and Louise Redicker, his wife, in a certain deed of Conveyance dated March 21, 1892, and recorded May 20, 1892 in Vol. 32 of Deeds at page 140, Records of Shasta County; Lot 2 of NE $\frac{1}{4}$, Sec. 2, Tp. 32 N. R. 3 W., and valuable water rights, all of the value of 6,000.00
Improvements of the value of 500.00

Stevenson Place:

SE $\frac{1}{4}$ and SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 33, and SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 34, containing 240 acres, also frac. W $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec. 6, Tp. 31 R. 3 W., of the value of 1,800.00
Improvements of the value of 300.00

Smith Place on Stillwater:

Township 32 North, Range 4 West,
 S $\frac{1}{2}$ of NE $\frac{1}{4}$; E $\frac{1}{2}$ of SE $\frac{1}{4}$ of NW $\frac{1}{4}$;
 SE $\frac{1}{4}$ and E $\frac{1}{2}$ of E $\frac{1}{2}$ of SW $\frac{1}{4}$ of
 Section 15, containing 300 acres; also
 NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 22, con-
 taining 40 acres, of the probable value
 of set aside as a Probate
 Homestead by the Superior Court in
 and for the County of Shasta. [6]

40 acres North of Road:

W $\frac{1}{2}$ of Lot 2 of NE $\frac{1}{4}$ of Section 3,
 containing 41 acres, of the probable
 value of 120.00

Range Land:

Township 33 North, Range 3 West,
 S $\frac{1}{2}$ of NE $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 20,
 containing 240 acres, of the probable
 value of 720.00

Wilburn Place:

An undivided $\frac{2}{3}$ interest in and to
 the E $\frac{1}{2}$ of NE $\frac{1}{4}$ of Sec. 21 and N $\frac{1}{2}$
 of SW $\frac{1}{4}$ and NW $\frac{1}{4}$ of Sec. 22, all in
 Tp. 32 N., R. 4 W., M.D.M. containing
 320 acres, of the probable value of 1,500.00

10,940.00

PERSONAL PROPERTY

60 head of hogs, approximate value 250.00
 2 horses, approximate value 100.00

Farming machinery and equipment of the approximate value	500.00
40 head of cattle of the approximate value	1200.00
1 automobile of approximate value	200.00
One Liberty Bond, value of	50.00
Cash	2156.65
Damages, prospective, for right of way through Stillwater property	1800.00
Damages, prospective, for right of way through Cow Creek Ranch.....	
	<hr/>
Total Assets	17,646.65

[Endorsed]: Filed June 22, 1936. [7]

[Title of Court and Cause.] No. 6935

ORDER APPROVING DEBTOR'S PETITION
IN PROCEEDINGS UNDER SECTION 75
OF THE BANKRUPTCY ACT.

At San Francisco, in said District, on the 23rd day of June, A. D. 1936, before the Honorable MICHAEL J. ROCHE, Judge of said Court, the petition of OLIVE LEMM, etc., praying that she be afforded an opportunity to effect a composition or an extension of time to pay her debts under Section 75 of the Bankruptcy Act, having been heard and duly considered, is approved as properly filed under said section.

Dated: June 23rd, 1936.

MICHAEL J. ROCHE

Judge,

United States District Court.

[Endorsed]: Filed Jun 23 1936. [8]

[Title of Court and Cause.] No. 6935

CREDITORS' MOTION FOR DISMISSAL OF
PETITION AND PROCEEDINGS UNDER
SECTION 75 (A-R)

Come now the Northern California National Bank (in liquidation), The Redding Savings Bank and Carr & Kennedy, a co-partnership, creditors of the above named debtor, and move the court that an order be made herein dismissing the petition filed by said debtor with John A. Spann, Conciliation Commissioner, on the 18th day of June, 1936, under

the provisions of Section 75 (A-R), as amended, of the Bankruptcy Act, upon the following grounds:

1. That said petition was filed by said debtor without authority of law;

2. That a petition and proceedings under Section 75 (A-R), as amended, of the Bankruptcy Act were heretofore filed and taken by said debtor, which proceedings were numbered 6575 in the files of the above entitled court, and upon motion of said debtor, after failure to effect a composition or extension of time under Section 75, an order was made in said proceedings by the above entitled court, Hon. Michael J. Roche, District Judge dismissing said petition and proceedings under section 75 (A-R) on the ground that no composition or extension had been reached; that said debtor, prior to said order dismissing said petition, also filed in said [9] proceedings numbered 6575, a petition to be adjudged a bankrupt under sub-section (s) of Section 75, as amended, of the Bankruptcy Act, and thereafter an order was made by the above entitled court, Hon. Michael J. Roche, District Judge granting the motion of the above named creditors for the dismissal of said proceedings under Section 75(s) of the Bankruptcy Act, as amended; and the dismissal of said prior proceedings taken by said debtor under Section 75, as amended, of the Bankruptcy Act constitute a bar to the petition filed herein by said debtor;

3. That by reason of the dismissal of said prior proceedings taken by said debtor under Section 75 of the Bankruptcy Act, as amended, the court herein

is without jurisdiction of the petition filed herein by said debtor on the 18th day of June, 1936;

4. That the petition filed herein by said debtor under Section 75 (A-R) was not filed in good faith, and was filed for the purpose of delaying and hindering her creditors;

5. That the debtor's petition as filed herein, is insufficient in law, and does not state or contain facts sufficient to constitute a petition by said debtor under Section 75 (A-R) of the Bankruptcy Act;

Said motion is based upon the debtor's petition herein, all the files and records of this court in the proceedings numbered 6575, heretofore taken by said debtor under Section 75, as amended of the Bankruptcy Act, to which reference is hereby made, and the affidavit of Laurence J. Kennedy, served and filed herewith.

Dated: July 22, 1936.

CARR & KENNEDY

Attorneys for the Northern
California National Bank, in
liquidation, The Redding Sav-
ing Savings Bank and Carr
& Kennedy. [10]

Service and receipt of a copy of the foregoing Creditors' Motion for Dismissal of Petition and Proceedings under Section 75 (A-R) is hereby admitted this 24th day of July, 1936.

GLENN D. NEWTON

Attorney for Debtor [11]

State of California
County of Shasta—ss.

LAURENCE J. KENNEDY, being first duly sworn, deposes and says:

That he is one of the law firm of Carr & Kennedy, of Redding, California, appearing herein as attorneys for the Northern California National Bank, in liquidation, The Redding Savings Bank and said Carr & Kennedy, a co-partnership;

That affiant is personally familiar with the matters and the court proceedings herein mentioned;

That the above named debtor, Olive Lemm, individually, and Olive Lemm as administratrix of the estate of Charles L. Lemm, deceased, is the same person who previously filed a petition in the above entitled court in proceedings under Section 75 of the Bankruptcy Act, numbered 6575 in the files of said court, which petition was referred to John A. Spann, Conciliation Commissioner of the County of Shasta, State of California;

That after hearings and proceedings before said Conciliation Commissioner in said proceedings filed by said debtor under Section 75 of the Bankruptcy Act, No. 6575, said debtor filed a Motion for Dismissal, in the words and figures following, to-wit:

[Title of Court and Cause.]

“Now comes Olive Lemm, individually, and Olive Lemm as Administratrix of the Estate of Charles L. Lemm, sometimes known as Chas. L. Lemm, deceased, the Debtor in the above en-

titled action, and moves the court that an order be made dismissing the above entitled proceedings for a composition or extension.

Said motion is made upon the ground that the Debtor has failed to obtain the acceptance of majority in number and amount of all creditors whose claims would have been affected by a composition or extension proposal.

Dated: February 14th, 1936.

GLENN D. NEWTON

Attorneys for Debtor and
Petitioner”

That upon filing said Motion for Dismissal said debtor filed a petition to be adjudged a bankrupt in accordance with sub-section (s) of Section 75, as amended, of the Bankruptcy Act, which said petition is on file in this court in said proceeding No. 6575, to [12] which reference is hereby made;

That on the 15th day of June, 1936, in the above entitled court an order was made by Hon. Michael J. Roche, District Judge, dismissing the proceedings taken by said debtor under Section 75 (A-R), in accordance with her Motion for Dismissal, above set forth; and thereupon the court made an order dismissing the petition filed by said debtor under Section 75(s) in accordance with motions heretofore served and filed by the creditors hereinabove named, to which motions, on file in said proceedings No. 6575, reference is hereby made for a statement of the grounds of said motions:

The proceedings in the above entitled court, before Hon. Michael J. Roche, District Judge, on the

15th day of June, 1936, are shown by the minutes of the court, as follows, to-wit:

“At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the court room thereof, in the City of Sacramento, on Monday, the 15th day of June, in the year of our Lord one thousand nine hundred and 36.

PRESENT: the HONORABLE MICHAEL J. ROCHE, District Judge.

No. 6575

In the Matter of

OLIVE LEMM, individually, etc.

Debtor

The motions of The Northern California National Bank, Carr & Kennedy, a copartnership, and of The Redding Savings Bank, Creditors, to dismiss the Petition of the Debtor to be adjudged a Bankrupt in accordance with Subsection “S” of Section 75 as amended, of the Bankruptcy Act, came on to be heard. L. J. Kennedy, Esq., appearing as attorney for said creditors and in support of said motions and Glenn D. Newton, Esq., appearing as attorney for the debtor. On motion of Mr. Newton, and good cause appearing therefor, it is Ordered that the Order heretofore signed as of May 28, 1936 and filed on June 1, 1936, be and the same is hereby vacated and set aside, and it is further ordered that the motion to dismiss the proceedings herein under Section 75 (A-R) be and the same is hereby granted on the ground that

no composition or extension has been reached, and that the creditors be allowed an exception to the ruling of the Court. The motions to dismiss the petition of the Debtor, under Section 75(s) was thereupon argued by the Attorneys, and the same being submitted and fully considered, it is Ordered that the motions of the Northern California National Bank; of Carr & Kennedy, a co-partnership, and of The Redding Savings Bank, Creditors, be and the same are each hereby granted and that the proceedings herein under Section 75(s) be and the same are hereby dismissed." [13]

That said debtor, after filing the foregoing proceedings under Section 75, as amended, of the Bankruptcy Act, No. 6575, and prior to said decision and order of Hon. Michael J. Roche, District Judge, entered on the 15th day of June, 1936, out of the cash listed in the schedule of her assets, filed with said original petition under Section 75, paid the debts due and owing to certain creditors of said debtor whose claims were listed as liabilities in Schedule A filed with said original petition under Section 75, and said creditors thereby received a preference over the creditors represented herein by affiant;

That the value of the assets of said debtor, as affiant is informed and believes, is greatly in excess of the value shown by Schedule B, attached to the petition herein; that the total value of the debtor's assets, according to a fair and reasonable value of same, exceeds the total amount of liabilities; and af-

fiant is informed and believes, and upon such information and belief hereby deposes that the petition of the debtor herein was filed for the purpose of delaying and hindering the creditors named in the foregoing motion, and that said petition was not filed in good faith;

Affiant further deposes and says that probate proceedings are now, and at the time of the filing of debtor's petition herein were, pending in the Superior Court of the State of California, in and for the County of Shasta for the administration of the estate of Charles L. Lemm, deceased, of which the debtor is the administratrix, and the filing of said petition herein is in disregard of the jurisdiction and the authority of the probate court of California in the matter of the administration of the estate of said decedent.

LAURENCE J. KENNEDY

Subscribed and sworn to before me this 24th day of July, 1936.

[Seal] MABEL LOWDON MOORES
Notary Public in and for the County of Shasta,
State of California.

[Endorsed]: Filed July 25, 1936. [14]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Tuesday the 22nd day of Sept., in the year of our Lord one thousand nine hundred and 36.

PRESENT: The Honorable MICHAEL J. ROCHE, District Judge.

No. 6935

In the Matter of

OLIVE LEMM, etc.,

Debtor.

The Motion of the Northern California National Bank (in liquidation), The Redding Savings Bank, and Carr and Kennedy, a copartnership, for dismissal of petition of proceedings under Section 75(A-R), heretofore heard and submitted, being now fully considered, it is Ordered that said motion be and the same is hereby granted and that the proceedings herein be and the same are hereby dismissed with prejudice. [15]

[Title of Court and Cause.] No. 6575

DEBTOR'S PETITION IN PROCEEDINGS
UNDER SECTION 75, AS AMENDED, OF
THE BANKRUPTCY ACT.

The petition of Olive Lemm, individually, and Olive Lemm, as Administratrix of the Estate of Charles L. Lemm, sometimes known as Chas. L. Lemm, Deceased, of Bella Vista, in the County of Shasta, and district and state of California, respectfully represents:

That she is personally bona fide, engaged primarily in farming operations as follows: Raising and selling of livestock and general farming; that such farming operations occur in the County of Shasta within said judicial district; that she is in-

solvent or unable to meet her debts as they mature; and that she desires to effect a composition or extension of time to pay her debts under Section 75, as amended, of the Bankruptcy Act.

That the schedule hereto annexed, marked "A", and verified by your petitioner's oath, contains a full and true statement of all her debts, and (so far as possible to ascertain) the names and places of residence of her creditors, and such further statements concerning said debts as are required by the provisions of said Act.

That the schedule hereto annexed, marked "B", and verified by your petitioner's oath, contains an accurate inventory of all her property, both real and personal, and such further statements concerning said property as are required by the provisions of said act.

That your petitioner is the duly appointed, qualified and acting Administratrix of the Estate of Charles L. Lemm, sometimes known as Chas. L. Lemm, Deceased, and that she is the [16] widow of said deceased. That all the property hereinafter described and set forth was and is the property of your petitioner and said deceased.

Wherefore, your petitioner prays that her petition may be approved by the Court and proceedings had in accordance with the provisions of said section.

OLIVE LEMM

Petitioner.

GLENN D. NEWTON

Attorney for Petitioner. [17]

Schedule A.

LIABILITIES

1. Promissory note made, executed and delivered by petitioner and said Chas. L. Lemm, deceased, as husband and wife, on July 13th, 1929, to Redding Savings Bank, secured by Deed of Trust of even date. Amount due on principal of said note \$11,500.00
Accrued interest on said note to date, estimated in the sum of 2,500.00

2. Promissory note made, executed and delivered by petitioner and said Chas. L. Lemm, Deceased, as husband and wife, on February 10th, 1931, to Redding Savings Bank, a banking corporation, Redding, California, secured by Deed of Trust of even date. Amount due on principal of said note 3,500.00
Accrued interest on said note to date, estimated in the sum of 500.00

3. Claims filed against Estate of said Charles L. Lemm, Deceased, as follows:

Promissory note made, executed and delivered by petitioner and said deceased, as husband and wife, to the Northern California National Bank, Redding, California, dated September 26th, 1932, in the sum of One Thousand Dollars.

Amount due on principal, together with interest accrued thereon	1,032.48
Open Book account with McCormick-Saeltzer Company, at Redding, California, in the sum of	251.86
Open Book account with Dr. Ferdinand Stabel, Redding, California, for medical services in the sum of	455.00
Open Book account with McDonald & Scott, Redding, California, for funeral expenses in the sum of	273.50
Open Book Account with Pernau-Walsh Printing Company, San Francisco, Calif. for printing brief in the sum of	100.00
Open Book Account with Carr & Kennedy, Attorneys at law, Redding, California, for services in Cow Creek Water case and litigation with Stillwater Land and Cattle Company, in the sum of	760.37
Open Book Account with the Union Oil Company of California, Redding, California, for gasoline, etc. in the sum of	24.30
Costs and expenses of administration in the Estate of Charles L. Lemm, Deceased, in the sum of	1,485.25

(Notify Jesse W. Carter, Attorney at Law, Redding, California, attorney for said petitioner, as Administratrix of said estate for particular items of said statement)

Attorney's fee of Jesse W. Carter, Attorney at Law, Redding, California, as attorney for said Estate, estimated in the sum of	1,200.00
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Total Liabilities	\$23,582.76
	[19]

Schedule B

INVENTORY OF ASSETS

The SE ¹ / ₄ of Section 35, Township 33, North, Range 3 West consisting of 240 acres; SW ¹ / ₄ of Section 36, Township 33 North, Range 3 West consisting of 160 acres;	5,000.00
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------

Township 32 North, Range 3 West, M.D.M. Frac. N ¹ / ₂ of NW ¹ / ₄ of Section 2, save and except that certain portion thereof conveyed by Henry N. Wilkinson in his life time to William Redeker and Louise Redeker, his wife, in a certain deed of Conveyance dated Mar. 21, 1892, and recorded May 20, 1892 in Vol. 32 of Deeds at page 140, Records of Shasta County of the estimated value of (68 acres)	3,740.00
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------

Improvements of the value of	1,500.00
Township 32 North, Range 4 West, S $\frac{1}{2}$ of NE $\frac{1}{4}$; E $\frac{1}{2}$ of SE $\frac{1}{4}$ of NW $\frac{1}{4}$; SE $\frac{1}{4}$ and E $\frac{1}{2}$ of E $\frac{1}{2}$ of SW $\frac{1}{4}$ of Section 15, containing 300 acres; also NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 22, con- taining 40 acres, of the probable value of	2,000.00
Township 32 North, Range 3 West Lot 2 of NE $\frac{1}{4}$ of Section 2, con- taining 83.22 acres, of the probable value of	415.00
W $\frac{1}{2}$ of Lot 2 of NE $\frac{1}{4}$ of Section 3, containing 41 acres, of the probable value of	120.00
Township 33 North, Range 3 West, S $\frac{1}{2}$ of NE $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 20, containing 240 acres, of the probable value of	720.00
SE $\frac{1}{4}$ and SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 33, and SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 34, containing 240 acres, of the probable value of	3,000.00
Township 31 North, Range 3 West: Frac. W $\frac{1}{2}$ of NW $\frac{1}{4}$ of Section 6 containing 78 acres, of the probable value of	234.00

PERSONAL PROPERTY

60 head of hogs, of the approximate value of	250.00
2 horses of the approximate value of	100.00
Farming machinery and equipment of the approximate value of	5000.00
	[20]
40 head of cattle of the approximate value of	1200.00
1 automobile of the probable value of	200.00
One Liberty Bond, of the value of	50.00
Cash	5000.00
	<hr/>
Total Assets	28,529.00
	[21]

United States of America,
District of Northern California—ss.

I, OLIVE LEMM, individually, and OLIVE LEMM, as Administratrix of the Estate of CHARLES L. LEMM, sometimes known as CHAS. L. LEMM, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

OLIVE LEMM

Subscribed and sworn to before me this 22nd day of November, 1935.

[Seal] GLENN D. NEWTON

Notary Public in and for the County of Shasta,
State of California.

My commission expires December 15th, 1937.

[Endorsed]: Filed July 25, 1936. [22]

[Title of Court and Cause.] No. 6575

ORDER APPROVING DEBTOR'S PETITION
IN PROCEEDINGS UNDER SECTION 75
OF THE BANKRUPTCY ACT.

At San Francisco, in said District, on the 25th day of November, A. D. 1935, before the Honorable A. F. St. Sure, Judge of said Court, the petition of Olive Lemm, individually, and Olive Lemm, as Administratrix of the Estate of Charles L. Lemm, Deceased, praying that she be afforded an oppor-

tunity to effect a composition or an extension of time to pay her debts under Section 75 of the Bankruptcy Act, having been heard and duly considered, is approved as properly filed under said Section.

Dated: November 25th, 1935.

A. F. ST. SURE

Judge,

United States District Court

[Endorsed]: Filed Nov. 25, 1935. [23]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To Walter B. Maling, Clerk of the United States District Court for the Northern District of California:

You are hereby informed that debtor above named has heretofore petitioned for an appeal from an order of the United States District Court made and entered on the 22nd day of September, 1936, dismissing *per* petition.

Debtor's petition for appeal having been granted, you are hereby requested to prepare and certify a transcript of the record which will include the following named papers necessary to a determination of the cause in the Circuit Court of Appeals:

1. Debtor's Petition and Schedules in Proceedings under Section 75, as amended, of the Bankruptcy Act, filed June 18, 1936, with Conciliation Commissioner. (No. 6935)

2. Order approving Debtor's petition, filed June 23, 1936.

3. Creditor's Motion for Dismissal of Petition and Proceedings under Section 75 (A-R), dated July 22, 1936, No. 6935.

4. Affidavit of Laurence J. Kennedy in Support of Creditor's Motion, dated July 24th, 1936, No. 6935.

5. Petitioner's Proposal of Compromise and Extension to Creditors, dated August 31st, 1936.

6. Petitioner's Memorandum of Points and Authorities in Opposition to Motion for Dismissal, undated.

7. Order Dismissing Proceedings, dated September 22, 1936.

Prior Proceeding No. 6575.

8. Debtor's Petition and Schedules in Proceedings under Section 75, as amended, of the Bankruptcy Act, filed November 22, 1935. [33]

9. Order approving Debtor's Petition, dated November 25th, 1935.

Dated: November 12, 1936.

C. H. SOOY

C. D. SOOY

GLENN D. NEWTON

Attorneys for Debtor.

Service by receipt of copy of above Praeceptum for Transcript of Record is admitted this 9th day of December, 1936.

CARR & KENNEDY

[Endorsed]: Filed Dec. 18, 1936. [34]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT ON APPEAL.

I, Walter B. Maling, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing 34 pages, numbered from 1 to 34, inclusive, contain a full, true and correct transcript of certain records and proceedings in the case of Olive Lemm, etc., debtor No. 6935 and also in the case of Olive Lemm, etc. debtor No. 6575, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for transcript on appeal, copy of which is embodied herein.

I further certify that the cost of preparing and certifying the foregoing transcript on appeal is the sum of Six and 55/100 (\$6.55) Dollars, and that the same has been paid to me by the attorneys for the appellants herein.

Also attached is a paper in No. 6575 entitled "Petitioner's Proposal of compromise and extension to creditors", the original of which is not of record in this office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 14th day of January, A. D. 1937.

[Seal]

WALTER B. MALING,

Clerk,

By F. M. LAMPERT

Deputy Clerk. [35]

[Title of Court and Cause.] No. 6575

PETITIONER'S PROPOSAL OF COMPROMISE AND EXTENSION TO CREDITORS

Comes now OLIVE LEMM, Petitioner, in the above-entitled matter and makes the following proposal of the compromise and extension in the above-entitled matter.

I.

PROPOSAL TO SECURED CREDITORS

To the secured creditors of petitioner and of the Estate of Charles L. Lemm, deceased, namely, The Redding Savings Bank, a banking corporation, petitioner offers to pay in full liquidation of the said obligations or liens evidenced by two promissory notes secured by deeds of trust in the sums of \$11,500 and \$3,500, a sum commensurate to the fair and reasonable market value of the property described in the deeds of trust securing said obligations. That said petitioner submits the proposal that the fair and reasonable market value of said property be determined by three appraisers, one of which appraisers shall be chosen by the duly authorized officer or officers of said Redding Savings Bank, a banking corporation, one shall be chosen by your petitioner, and one shall be chosen by John A. Spann, Conciliation Commissioner of the County of Shasta, State of California; that petitioner be given an extension of time for a period of three years from the date of the acceptance of said extension proposed in which to pay said amount determined in the manner aforesaid to be the fair and reason-

able market value of said property; that petitioner offers to pay interest in the future and during said period of extension on said amount as determined at the [36] rate of 5% per annum payable annually; that petitioner further offers to pay during said period of extension in consideration that she retains possession of said property an annual rental on said property the amount and kind of such rental to be the usual, customary rental, based upon the rental value, net income, and earning capacity of the property, and the amount of which rental is to be determined by the same appraisers chosen to determine the value of the property described in said deeds of trust.

Petitioner further proposes that the management and supervision of said property shall be subjected to the scrutiny of John A. Spann, Conciliation Commissioner of said Shasta County and that said rental as determined in the manner aforesaid shall be paid to said John A. Spann to be used by him first for the payment of taxes and upkeep of the property, and the remainder to be paid on said obligations.

Petitioner further proposes to apply towards the liquidation of said obligations all sums after deducting attorney's fees and expenses that may be received by her from the State of California in settlement of the property taken and condemned for a right of way through the premises described in said deeds of trusts.

At the end of said three year extension period, petitioner agrees to pay the balance due on the

amount of the appraisal of said property as determined in the manner aforesaid. In the event that petitioner is unable to pay said balance at the end of said three year period, petitioner agrees to relinquish and convey all her right, title and interest and all the right, title and interest of the Estate of Charles Lemm, deceased, in and to the property described in said deeds of trust to said secured creditor, or to permit the foreclosure sale of said property, on the condition that in either event, said Redding Savings Bank agrees not to take a deficiency judgment.

Petitioner further proposes to put said property described in said deeds of trust on a production basis that will be most consistent [37] with the protection of the rights of said creditors and the petitioner's ability to pay with a view to the financial rehabilitation of herself and said Estate of Charles Lemm, deceased.

Petitioner further proposes, in addition to the foregoing, to reimburse said secured creditor for all taxes which have been paid by it on the premises described in said deeds of trust.

Petitioner further proposes to use her best efforts to liquidate the other assets of herself and said estate on a basis that will be consistent with the protection of the rights of said Redding Savings Bank, with a view to the financial rehabilitation of herself and said estate and the liquidation of said obligations.

II.

PROPOSAL TO UNSECURED CREDITORS

To the unsecured creditors of petitioner and the

Estate of Charles Lemm, deceased, petitioner offers to pay in cash, in consideration of full liquidation or settlement of all claims of the unsecured creditors, a sum equal to 66.67 of the face amount of each of said obligations.

Dated, at Redding, California, this 31st day of August, 1936.

OLIVE LEMM [38]

In the United States Circuit Court of Appeals in
and for the Ninth Circuit.

No. 8363

In the Matter of OLIVE LEMM, individually, and
OLIVE LEMM, as Administratrix of the Es-
tate of CHARLES L. LEMM, Deceased.

PETITION FOR ALLOWANCE OF APPEAL.

To the Honorable, the Judges of the Circuit Court
of Appeals for the Ninth Circuit. Your Peti-
tioner, OLIVE LEMM, individually, and Ad-
ministratrix of the Estate of Charles L. Lemm,
deceased, respectfully represents:

I.

That she resides at Bella Vista, in the County of
Shasta, in the Northern Judicial District of the
State of California.

II.

That heretofore and on the 18th day of June,
1936, your Petitioner filed her petition for a compo-

sition or extension agreement under Section 75 A to R of the Bankruptcy Act of the United States in the United States District Court in and for the Northern District of California.

III.

That on the 22d day of September, 1936, an order was made by the United States District Court for said District dismissing Petitioner's proceedings under Section 75 A to R of the Bankruptcy Act, a copy of which order is attached to this Petition marked "Exhibit A" and made a part hereof by reference.

IV.

That your Petitioner feels aggrieved by said Order of Dismissal entered in said proceedings in bankruptcy and does hereby appeal from said order to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons set forth in the Assignment of Errors filed herewith and Petitioner prays that her appeal be allowed; that citation be issued as provided by law to the Northern California National Bank, the Redding Savings Bank and Carr & Kennedy, co-partnership, creditors of Petitioner.

V.

Your Petitioner further prays that a transcript of the record proceedings and documents upon which said order was based duly authenticated, be sent to the United States Circuit Court of Appeals for the *Northern* Circuit, under the rules of said court in such cases made and provided and your

Petitioner further prays that the proper order be made relating to the Security to be required of it.

C. H. SOOY

C. D. SOOY

GLENN D. NEWTON

Attorneys for Petitioner.

Northern District of California

City and County of San Francisco—ss.

C. D. SOOY being first duly sworn deposes and says: that he is one of the attorneys for OLIVE LEMM, Petitioner, that as such attorney he is fully informed as to the facts stated in the foregoing Petition; that he has read the same and the facts therein stated are true save as to the matters therein stated on information or belief and as to those matters he believes them to be true; that he makes this verification on behalf of Petitioner because she is not available to make the same.

C. D. SOOY

Subscribed and sworn to before me this 20th day of October, 1936.

[Notary Seal] DOROTHY H. McLENNAN

Notary Public in and for the City and County of San Francisco, State of California.

EXHIBIT "A"

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Tuesday the 22nd day

of Sept., in the year of our Lord one thousand nine hundred and 36.

PRESENT: The Honorable MICHAEL J. ROCHE, District Judge.

[Title of Cause.]

The Motion of the Northern California National Bank (in liquidation), The Redding Savings Bank, and Carr and Kennedy, a co-partnership, for dismissal of petition of proceedings under Section 75 (A-R), heretofore heard and submitted, being now fully considered, it is Ordered that said motion be and the same is hereby granted and that the proceedings herein be and the same are hereby dismissed with prejudice.

[Endorsed]: Petition for Appeal filed Oct. 21, 1935. Paul P. O'Brien, Clerk.

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS

Comes now OLIVE LEMM, Petitioner herein, and makes the following assignment of errors in support of her Petition for Allowance of Appeal herein filed.

1. That the Order of the United States District Court dismissing Petitioner's proceedings under Section 75 (a to r) of the Bankruptcy Act was not justified by law or by the facts of this case.

2. That the District Court announced neither reasons of fact nor rules of law as a basis for its order.

3. That no ground for an order of dismissal either in law or fact was laid by the Petitioner's creditors in their motion, affidavits or at the hearing before the Court.

In view of the fact that the United States District Court did not set forth the reasons for its decision Petitioner refers to creditors' written motion for an order of dismissal as supplying the only possible basis for an order of dismissal.

4. Petitioner assigns as error the ruling that debtor's Petition was filed without authority of law.

5. Creditors' motion states that a dismissal of proceedings under Section 75s as amended (new Frazier-Lemke Act) constitutes a bar to the proceedings under Section 75 (a to r). Petitioner assigns as error the order of dismissal made upon this ground.

6. Creditors' motion states that the United States District Court has no jurisdiction of proceedings filed under Section 75 (a to r) for a composition or extension where prior proceedings in which debtor was adjudicated a bankrupt under 75s were dismissed. This reason for the order of dismissal being in fact the same as the next preceding alleged rule and being equally unsound is also assigned as error.

7. Creditors contended that debtor's petition under Section 75 (a to r) was not filed in good faith and was filed for the purpose of delayng and hindering her creditors.

On this disputed question of fact the United States District Court held in favor of Petitioner and announced in open court that debtor's action was meritorious and that she was entitled to relief.

8. Creditors state that debtor's petition for a composition is insufficient in law and does not state a ground for relief under Section 75 (a to r).

The order of dismissal if based upon this ground is erroneous in that debtor filed a form of petition approved by the United States Supreme Court and her Petition was specifically approved by the United States District Court on the 23d day of June, 1936.

WHEREFORE Petitioner respectfully prays that the Order of Dismissal heretofore made on the 22d day of September, 1936, be reviewed by this Honorable Circuit Court of Appeals and set aside.

C. H. SOOY

C. D. SOOY

GLENN D. NEWTON

Attorneys for Petitioner.

[Endorsed]: Assignment of errors. Filed Oct. 21, 1936. Paul P. O'Brien, Clerk.

At a Stated Term, to wit: The October Term A. D. 1936, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the twenty-sixth day of October in the year of our Lord one thousand nine hundred and thirty-six.

PRESENT: Honorable CURTIS D. WILBUR,
Senior Circuit Judge, Presiding; Honorable
FRANCIS A. GARRECHT, Circuit Judge;
Honorable WILLIAM DENMAN, Circuit
Judge.

[Title of Cause.]

ORDER ALLOWING APPEAL.

Upon consideration of the petition of appellant, filed October 21, 1936, for allowance of appeal herein under section 24b of the Bankruptcy Act, and of the assignments of error, filed therewith, and good cause therefor appearing,

IT IS ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order of the District Court of the United States for the Northern District of California, entered on September 22, 1936, dismissing petitioner's proceedings under section 75 A to R of the Bankruptcy Act be, and hereby is allowed, conditioned upon the giving of a cost bond in the sum of Two Hundred and Fifty Dollars within fifteen days from date.

IT IS FURTHER ORDERED that if appellant desires this appeal to act as a supersedeas, bond in the sum of Five Thousand Dollars (\$5,000.00) with good and sufficient security, must be given within fifteen days from date. If such supersedeas bond is one with persons as sureties then such sureties shall justify before a United States Commissioner, cost

or supersedeas bond to be forwarded to the clerk of this Court for approval.

[Title of Court and Cause.]

CITATION ON APPEAL

United States of America:

To Northern California National Bank, The Redding Savings Bank and Carr & Kennedy, a co-partnership, GREETINGS:

YOU AND EACH OF YOU Are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, within 30 days from the date hereof pursuant to an appeal filed in the Clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit wherein OLIVE LEMM, individually, and OLIVE LEMM, as Administratrix of the Estate of Charles L. Lemm, deceased, is Appellant and you are Respondents to show cause if any there be why the Order rendered against the said Appellant as in the Assignment of Errors mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable CURTIS D. WILBUR, Senior Judge of the United States Circuit Court of Appeals for the Ninth Circuit this 31st day of October, in the Year of Our Lord, One Thousand Nine Hundred and Thirty-six.

CURTIS D. WILBUR

Judge of the United States
Circuit Court of Appeals for the
Ninth Circuit.

Received three copies of the within citation on appeal this 7th day of November, 1936.

CARR & KENNEDY

Attorneys for Redding Savings Bank, a corporation, Carr & Kennedy, and Northern California National Bank.

[Endorsed]: Filed Jan. 18, 1937. Paul P. O'Brien, Clerk.

[Endorsed]: No. 8363. United States Circuit Court of Appeals for the Ninth Circuit. Olive Lemm, Individually, and as Administratrix of the Estate of Charles Lemm, Deceased, Appellant, vs. Northern California National Bank, The Redding Savings Bank and Carr and Gregory, a Co-partnership, Appellees. Transcript of Record Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division.

Filed January 15, 1937.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

